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In the Supreme Court of the United States

OCTOBER TERM, 1932

No. 903

THE JOHN K. AND CATHERINE S. MULLEN BENEVOLENT CORPORATION, petitioner

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court overruling a demurrer to the complaint is reported in 40 F. (2d) 937. Its opinion on the merits (R. 196–200) is not reported. The opinion of the Circuit Court of Appeals (R. 207–234) is reported in 63 F. (2d) 48.

JURISDICTION

The judgment of the Circuit Court of Appeals was entered January 23, 1933 (R. 234–235). A petition for rehearing was denied March 21, 1933 (R. 235). The petition for certiorari was filed

April 24, 1933. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTIONS PRESENTED

1. Petitioner owned sidewalk and sewerage disposal construction bonds issued by an Idaho municipal corporation, which were to be paid only out of pro rata assessments against the respective properties benefited. The question presented is whether petitioner may recover under the Tucker Act from the United States amounts due on the bonds not included, through error, in the original assessment and not assessed until after the United States had purchased the properties in question for use in the construction of a reclamation dam.

2. Whether, if petitioner had a cause of action on the merits, this suit was barred by limitations applicable to suits under the Tucker Act.

STATUTES INVOLVED

The applicable provisions of the Idaho statutes are set forth in the Appendix (*infra,* pp. 13–25).

STATEMENT

Petitioner brought suit under the Tucker Act against the United States in the United States District Court for the District of Idaho to recover the unpaid balance of the principal and interest on sewage disposal and sidewalk construction bonds issued by American Falls, a municipal corporation

of Idaho (R. 7–31). Judgment was given for petitioner (R. 78–79). Upon appeal the Circuit Court of Appeals for the Ninth Circuit reversed, with instructions to dismiss the action because of lack of jurisdiction (R. 234–235).

The District Court made the following findings of fact (R. 59–76):

Petitioner is a Colorado corporation (R. 59), and the claim it sets up in the present suit is based upon an implied contract and is for an amount less than $10,000 (R. 60). On February 23, 1915, American Falls, a municipal corporation of Idaho, enacted an ordinance of intention to organize a sewerage district to be known as Local Sewerage Improvement District No. 1, to construct sewerage and disposal works in the district, and to issue bonds for the payment of the cost thereof. In accordance with this ordinance, a second ordinance was enacted creating and establishing such a district, providing for the construction of the sewerage system and the assessment of its cost against the property in the district (R. 60). The assessments provided for in the ordinance were levied and an assessment roll setting forth the necessary details was certified to and filed (R. 60–61). On July 6, 1915, a third ordinance was enacted approving and confirming the assessments as set forth in the assessment roll and providing for the payment of the assessments in ten equal installments, with interest (R. 61).

After other ordinances containing minor amendments were passed, an ordinance was enacted on

October 7, 1915, authorizing and providing for the issuance and sale of sewerage improvement bonds totaling $24,000 to provide funds for the construction of the system (R. 61–62). This ordinance also provided for levying and collection of special assessments which were thought sufficient to pay the principal and interest of these bonds in accordance with their provisions, but through mistake or inadvertence these assessments were not in fact sufficient to meet the payments (R. 62). Twenty-four bonds, each for a face amount of $1,000, with interest payable semiannually at the rate of seven per centum per annum, were issued (R. 62). Upon their issuance J. K. Mullen purchased all the bonds for their face value (R. 62–63). In 1925 Mullen transferred four of the bonds to petitioner, which it now owns. No amounts have been paid on the bonds and there is now due upon their principal $4,000, with interest from April 28, 1927 (R. 63). The form of the bonds is set out in paragraph 8 of the second amended complaint (R. 17–20, 63).

In 1916 American Falls created a second sewerage improvement district known as District No. 2 and issued bonds for this district in the amount of $7,150 for the construction of a sewerage system within the district in the same manner as the bonds for District No. 1 were issued (R. 63–64). The assessments made to pay the bonds for District No. 2 were through mistake or inadvertence not sufficient to pay the principal and interest (R. 65).

J. K. Mullen acquired all of the bonds issued for District No. 2 and transferred to petitioner four of these bonds, on which there is now due and unpaid $1,351.11, with interest from October 25, 1929 (R. 65–66). These bonds were identical in form and substance with the bonds of District No. 1 (R. 66).

During 1916 American Falls also established Local Improvement District No. 8 for the construction of cement sidewalks within portions of this district, and it issued bonds in a manner similar to that for Districts Nos. 1 and 2 to pay for this construction (R. 66–67). As in the case of Districts Nos. 1 and 2, the assessments to pay the bonds of District No. 8, were, through mistake or inadvertence, not sufficient to pay the principal and interest of the bonds (R. 67–68). J. K. Mullen purchased the entire issue of the bonds for this district, and in 1925 transferred to petitioner six of these bonds (R. 68). There is now due $3,000 on these bonds, together with interest from March 18, 1928 (R. 68–69). These bonds were in form and substance similar to those issued for the other districts (R. 69).

Because through error the original assessments were not sufficient to pay the principal and interest on the above-mentioned bonds for the three districts, ordinances were passed on July 3, 1928, providing for reassessments upon all the property in the three districts in order to take care of the amounts not paid on these bonds (R. 69–70).

Under the terms of the bonds and the statutes of Idaho, the only method of collecting the amounts due on the bonds was by the levy and collection of special assessments upon the property within the respective districts (R. 70), and by statutory provisions American Falls was not liable on the bonds, its only obligation being to collect the assessments (R. 71).

The United States acquired all the property within the three districts by condemnation proceedings (to which petitioner was not a party) or voluntary conveyance between 1920 and January 1, 1927 (R. 76). The owners retained possession until about January 1, 1927 (R. 76), when the United States, acting under authority of Congress and through its Department of the Interior and United States Reclamation Service, took possession of all the real property as a site for a reclamation storage reservoir, permanently flooding all of the property (R. 71–72). By this action petitioner's only remedy for collection of the amounts due on its bonds was destroyed (R. 72). The United States was aware of the situation in regard to petitioner's bonds and at the time it acquired the property it temporarily withheld $14,000 of the purchase price to be paid for the property in question (R. 73).

At the time the instant suit was filed there was due on petitioner's bonds $9,547.33 (R. 73). Previous to this time payments had been made by the

owners of the affected land to the City of American Falls on the bonds, which amounts were on deposit in a bank at the time of its failure, part of this sum having been collected from the bank and applied to payment on the bonds in question (R. 73–74). By allowing a credit for these payments the net amount due petitioner on the bonds was $8,104.79 (R. 74).

At the time the United States took the property in question it paid the amounts due under the original assessments, thereby discharging the liens for these sums. However, it did not pay the difference between the sum of the original assessments and the total amounts due on the bonds (R. 74).

The United States excepted to the findings of fact made by the court because not supported by the evidence and because improper evidence was admitted upon which the findings were based (R. 140), and it made a motion to correct the findings of fact, which was denied by the court, and an exception taken by the United States (R. 141, 149–156).

ARGUMENT

I

It is clear from the statutory provisions and the terms of the bonds that petitioner's remedy to secure payment on the bonds is confined to the enforcement of the assessments levied against the

property in the district.* And when the proportionate cost of improvement has been assessed.

*The bonds upon which petitioner's claim is based were authorized by statutes of Idaho to be issued for sidewalks and sewerage construction work. These statutes have been made a part of the Idaho Code Annotated, 1932 official edition, as chapters 27 and 28, dealing respectively with local improvement districts organized prior to March 15, 1927, and with sewer construction. Chapter 29 of this Code provides for instalment payment of improvement assessments. Section 49-2709 I.C.A. (*infra*, p. 14) provides that an amount assessed on any land for improvement construction work shall become a lien upon the land. Section 49-2716 I.C.A. (*infra*, p. 18) provides for the issuance of bonds to cover the cost of improvement construction. Section 49-2715 I.C.A. provides that an authorized officer of a municipal corporation shall levy assessments each year sufficient to meet payments on the bonds. Section 49-2721 provides that the owner of any piece of property liable for any special assessment may redeem his property by paying the entire assessment chargeable against the property and that when it has been so redeemed it shall not be thereafter liable for further assessments for the cost of the particular improvement. Section 49-2725 I.C.A. (*infra*, p. 22) sets forth the bondholders' rights and remedies, assigning to them the liens on the property created by the assessment. Section 49-2726 I.C.A. (*infra*, p. 23) provides that whenever, because of mistake or inadvertence, the amount assessed shall not be sufficient to pay the costs of the improvement made, the authorized officers of the municipal corporation shall make reassessments on all the property in the improvement district sufficient to pay for the improvement. Section 49-2728 I.C.A. provides that a municipality which has issued an improvement bond shall not be liable to the bondholder except for the collection of assessments. The bondholders' remedy in case of nonpayment is to be confined to the enforcement of the assessments.

The provisions dealing with the issuance of sewage disposal bonds are similar to those for improvement construction work. See 49-2813, 49-2820, 49-2821, 49-2822, 49-2826, 49-2829, 49-2830, and 49-2831.

against a particular piece of property the amount of this assessment and that amount only constitutes a lien upon the property, which is discharged by the payment of the assessment or by foreclosure of the property. *New First National Bank* v. *Weiser*, 30 Idaho 15.

The Idaho statutes give a lien against the property affected only in the event that there has been an assessment against the property. The bonds constitute a lien against the property taken only to the extent of the amount assessed. *Heine* v. *Commissioners*, 19 Wall. 655, 659; *Lyon* v. *Alley*, 130 U.S. 177, 180. It is admitted in the instant case that at the time the United States took the property in question the full amount of the original assessments had been paid, and accordingly all liens arising by virtue of this assessment had been discharged. Petitioner contends that the property was also subjected to liens for the balance of the amount of the face of the bonds not covered by the original assessment.

In view of the fact that no assessment for this balance had been made at the time the United States took the property, a necessary condition precedent under the Idaho statutes to a lien for this amount had not occurred. Accordingly, we believe that petitioner had no interest in the property when it was taken by the United States, and consequently has no right to recover under the Tucker Act against the United States. The State statutes were, of course, ineffective to confer any

right of lien against the property after the acquisition by the United States, when the liens had not theretofore been perfected.

Petitioner also contends that, since the United States extinguished the only means by which payment could be made, this constituted a taking of the bonds for which just compensation should be paid. The United States took only the land, and no one who did not have a specific interest in the land at the time of its taking is entitled to compensation because of the taking. Petitioner apparently suffers solely because of the error of the municipal authorities when the bonds were first issued. The fact that the United States knew that a balance was due on the bonds which could only be collected from the land in question was not important. The United States was not a party to the bonds and the bondholders had no definite interest in the property at the time of its taking by the United States. The United States did not appropriate to itself any rights under the bonds, and so there has not been a taking for which just compensation must be paid under the Fifth Amendment. *Omnia Commercial Co.* v. *United States*, 261 U.S. 502.

II

The present suit has been brought under the Tucker Act against the United States, and, since the sovereign may be sued only with its consent and only upon full compliance with the conditions

of this consent, there was no jurisdiction to entertain the present suit unless compliance with these conditions was affirmatively shown. The provision in the Tucker Act that suit must be brought within six years is unlike the ordinary statute of limitations, being a jurisdictional requirement. Accordingly, the burden is upon petitioner to show affirmatively this fact. *Compagnie Generale Transatlantique* v. *United States,* 51 F. (2d) 1053 (C.C.A. 2d). The burden is not upon the United States to plead this limitation as a defense. *Carpenter* v. *United States,* 56 F. (2d) 828 (C.C.A. 2d).

The findings of fact show that the United States acquired the property in question, in some instances by condemnation proceedings but mainly by deed from the record owners, at various times between 1920 and January 1, 1927 (R. 76). It is clear that whenever these purchases were made the United States had taken the property so acquired even though in some instances the previous owners had been allowed to retain possession for a time. The petition was filed November 25, 1929 (R. 7). Upon this state of the record it does not affirmatively appear that all or any particular piece of the property in question had been taken within the six years immediately preceding the filing of the suit, because some of the property was acquired as early as 1920. Accordingly, petitioner, not having made a showing of necessary jurisdictional facts, is not entitled to maintain this suit under the Tucker Act.

The instant case involves a construction of the applicable statutory provisions of Idaho as applied to the particular bonds in question. Similar questions from other States would depend upon other local statutes. Any suit involving Idaho bonds very probably would arise in the Ninth Circuit and accordingly be governed by the decision of the court below. Under these circumstances the questions presented do not seem to be of general importance to the country as a whole.

CONCLUSION

The decision of the court below involved the construction of State statutes and their application to particular facts. It appears to be correct. The case does not seem to present questions of general importance. The petition should be denied.

Respectfully submitted.

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MAY 1933.

APPENDIX

IDAHO CODE ANNOTATED, 1932 OFFICIAL EDITION

SECTION 56-602 (I.C.S. § 71 [28]). *Consent to purchases by United States.*—Consent is given to any purchase already made, or that may hereafter be made, by the government of the United States, of any lots, or tracts of land, within this state, for the use of such government, and to erect thereon and use such buildings, or other improvements, as may be deemed necessary by said government; and over such lands and the buildings, or improvements, that are, or may be, erected thereon, the said government shall have entire control and jurisdiction, except that the state shall have jurisdiction to execute thereon all process, civil or criminal, lawfully issued by the courts of this state, and not incompatible with this cession.

SECTION 49-2702 (I.C.S. § 4000). *Bases of assessments.*—The assessment of the cost and expense of any work or improvement provided for in sections 3942 of Idaho Compiled Statutes and 49-1106 of Idaho Code shall be assessed upon the abutting, contiguous and tributary lots and lands, and lots and lands included in the improvement district formed, each lot and parcel of land being separately assessed for the full debt thereof in proportion to the number of feet of such lands and lots fronting thereon or included in the improvement district, and in proportion to the benefits derived to such property by said improvement suf-

ficient to cover the total cost and expense of the work to the center of the street.

SECTION 49-2707 (I.C.S. § 4005). *Ordinance creating improvement district.*—By the provisions of such ordinance a local improvement district shall be established, to be called "Local improvement district No. —", which shall include all the property fronting or abutting on, contiguous or tributary to the street to be improved, between the points named in such resolution or ordinance to the distance back from such street, if platted in blocks to the center of the block; if platted in lots to the center of the lots; and if not platted, to the distance of 125 feet.

Such ordinance shall provide that such improvements shall be made and that the cost and expense thereof shall be taxed and assessed upon all property in such local improvement district, which cost shall be assessed in proportion to the number of feet of such lands and lots fronting thereon, or abutting, contiguous or tributary thereto, and included in said improvement district and in proportion to the benefits derived by said improvement: *Provided*, That the city council or trustees may expend from the general fund for such purposes such sums as, in their judgment, may be fair and equitable in consideration of benefits accruing to the general public by reason of such improvement.

SECTION 49-2709 (I.C.S. § 4007). *Lien of assessments: Foreclosure.*—Whenever any expense of cost of work shall have been assessed on any land the amount of said expenses shall become a lien upon said lands, which shall take precedence of all other liens, and which may be foreclosed in accord-

ance with the provisions of the Code of Civil Procedure.

Such suit shall be in the name of the city of ——— (naming it) as plaintiff, and in any such proceedings where the court trying the same shall be satisfied that the work has been done or material furnished, which, according to the true intent of this chapter, would be properly chargeable upon the lots or lands through or by which the street, alley or highway improved or repaired may pass, a recovery shall be permitted, or a charge enforced to the extent of the proper proportion of the value of the work or material which would be chargeable on such lot or land notwithstanding any informalities, irregularities or defects in any of the proceedings of such municipal corporation or any of its officers.

SECTION 49-2710 (I.C.S. § 4008). *Assessment roll.*—Upon the passage of an ordinance as herein provided, or at such later time as the council or board of the trustees may determine, the committee on streets, together with the city engineer, or other proper authority of such municipality, shall make out an assessment roll according to the provisions of said ordinance and shall certify the same to the council or trustees of such municipality.

SECTION 49-2711 (I.C.S. § 4009). *Notice of filing roll: Time to file objections.*—Upon receiving the said assessment roll the clerk of the municipality shall give notice by three successive publications in the official newspaper of such municipality that such assessment roll is on file in his office, the date of filing the same, and said notice shall state a time at which the council or trustees will hear and consider objections to said assessment roll by the

parties aggrieved by such assessments. The owner or owners of any property which is assessed in such assessment roll, whether named or not in such roll, may, within 10 days from the last publication provided herein, file with the clerk his objections, in writing, to said assessment.

SECTION 49-2712 (I.C.S. § 4010). *Hearing objections: Order thereon.*—At the time appointed for hearing objections to such assessment, the council or trustees shall hear and determine all objections whch have been filed by any party interested to the regularity of the proceedings in making such assessment, and the correctness of such assessment, or of the amount levied on any particular lot or parcel of land, and the council or trustees shall have the power to adjourn such hearing from time to time and shall have power, in their discretion, to revise, correct, confirm or set aside such assessment and to order that such assessment be made de novo and such council or trustees shall pass an order approving and confirming such assessment as corrected by them, and their decision and order shall be a final determination of the regularity, validity and correctness of said assessment to the amount thereof levied on each lot and parcel of land.

SECTION 49-2713 (I.C.S. § 4011). *Appeal from order.*—Any person who has filed objections to such assessment or reassessment as hereinbefore provided shall have the right to appeal to the district court of the state and county in which said municipality may be situated.

Such appeal shall be taken by filing a written notice of appeal with the clerk of such municipality within 10 days after such assessment or reas-

sessment roll shall have been approved and confirmed by the council or trustees, and said notice shall describe the property and the objections of such appellant to such assessment, and such appellant shall also file with the clerk of the district court aforesaid, within 20 days from the approval and confirmation of such roll by the council or trustees, a copy of said notice of appeal, assessment or reassessment roll and proceedings thereof, certified by the clerk of such municipality, together with a bond to such municipality, conditioned to pay all costs that may be awarded against the appellant in such sum not less than $200 and with such security as shall be approved by the judge of said court.

SECTION 49-2714 (I.C.S. § 4012), *Trial of appeal.*—The case shall be docketed by the clerk of said court in the name of the person taking the appeal against the municipality as "An appeal from assessments." Said cause shall then be at issue and have precedence over all civil cases pending in said court, except proceedings under the act relating to eminent domain by cities and villages, actions of forcible entry and detainer. Such appeal shall be tried in said court as in the case of equitable causes, except that no pleadings shall be necessary. The judgment of the court shall be either to confirm, modify or annul the assessment in so far as the same affects the property of the appellant, from which judgment an appeal shall lie to the Supreme Court, as in other causes. In case the assessment is confirmed, the fees of the clerk of the municipality for copies of the record shall be taxed against the appellant with other costs.

SECTION 49-2715 (I.C.S. § 4013). *Special assessments for improvements: Collection.*—All such assessments shall be known as special assessments for improvements and shall be levied and collected as a separate tax, in addition to the taxes for general revenue purposes, to be placed on the tax roll for collection, subject to the same penalties and collected in the same manner as other municipal taxes.

SECTION 49-2716 (I.C.S. § 4014). *Bonds issuance to cover instalment payments.*—Whenever the mayor and council or trustees of any municipality shall, under authority vested in them by any laws of this state, cause any street or avenue, or alley in such municipality, to be sidewalked, graded, curbed, planked, graveled, paved, guttered, sprinkled, lighted, repaired, or macadamized, or any other local street improvements, provided for in section 3942 of Idaho Compiled Statutes and 49-1106 of Idaho Code, the cost and expense of which is chargeable to the abutting, adjoining, contiguous or approximate property, they may, in their discretion, provide for the payment of the costs and expenses thereof by instalments instead of levying the entire tax of special assessments for such costs at one time, and for such instalments they may issue, in the name of the municipality, improvement bonds of the district, which shall include the adjoining, contiguous, and approximate property liable to assessment for such local improvements payable in instalments of equal amount each year, which bonds shall, by their terms, be made payable on or before a date not to exceed 10 years from and after the date of issue of such bonds, and shall bear interest not ex-

ceeding 7 per cent per annum, number of years for said bonds to run and the rate of interest thereon, within said limits, in each instance to be determined by the city council or village trustees: *Provided, however,* That when such bonds are issued for further, separate, or additional improvement by paving street or streets, or highways that have theretofore been graded, curbed, or graveled only, under the provisions of this chapter, then such bonds shall be a subsequent lien upon the property subject to assessment for such improvement, to the lien of the unpaid, unliquidated, and unredeemed outstanding bonds, theretofore issued for the original improvement of grading, curbing, or graveling of such street or streets or highway: *Provided further,* That the grading, curbing, or graveling of street, streets, or highways, only and thereafter the paving of said street, streets or highways as shall have theretofore been graded, curbed, or graveled, as allowed and contemplated by provisions of this chapter, shall not be construed or understood as one of the same improvement, or for the same purpose or for one or the same benefit, or as a double assessment for improvements against the property to be assessed for the payment of the costs and expenses of such improvement, but shall be considered and construed as separate, distinct, single, and independent improvements and benefits, to such street, streets, or highways and the property assessed for the payment of the costs and expenses thereof. And all assessments levied or bonds issued for the payment of either or each of such improvements, shall be considered and construed as assessments levied or bonds issued for separate, distinct, single, and

independent improvements and benefits on and to such street, or streets, or highways, and the property assessed for the costs and expenses of such improvement.

SECTION 49-2717 (I.C.S. § 4015). *Disposal of bonds—Interim warrants.*—Such bonds may be issued to the contractor constructing the improvement in payment thereof, or the mayor or council or trustees or other authorized officers of said municipality may sell the same at not less than their par value net, and pay the proceeds thereof to the contractor. If the council or trustees shall determine to issue and sell said bonds, they may, for the purpose of meeting the expense of making said improvements as the same are installed prior to the sale of said bonds, issue warrants against the improvement district, payable to the contractor or other proper person, upon estimates of the city or village engineer, bearing interest at the rate of not to exceed 7 per cent per annum, which warrants, together with the interest due thereon at the date of the issuance of said bonds, shall be redeemed and retired by the proceeds of the sale of said bonds.

SECTION 49-2718 (I.C.S. § 4016). *Maximum bond issue—Interest coupons.*—Such bonds shall not be issued in excess of the contract price and expense of such improvement, including engineering and other clerical service, advertising, cost of inspection, cost of collecting assessments, and interest upon warrants, if issued as aforesaid, and the instalment coupons shall include annual interest on such instalments to the maturity thereof. The bonds shall be of such denomination as the council or trustees shall deem proper.

SECTION 49-2720 (I.C.S. § 4018). *Form of bonds.*—Such bonds shall be numbered from one upward, consecutively, and each bond and coupon shall be signed by the mayor, or the chairman of the board of trustees, countersigned by the city or village treasurer, and attested by the clerk of such municipality: *Provided, however,* That such coupons may, in lieu of being signed have printed thereon the facsimile of the signature of said officers, and each bond shall have the seal of such municipality affixed thereto, and shall refer to the improvement district for the payment of which the same shall be issued. Each bond shall provide that the principal sum therein named and the interest thereon shall be payable out of the local improvement fund created for the payment of the cost and expense of such improvement and not otherwise.

SECTION 49-2721 (I.C.S. § 4019). *Payment of instalments by owner.*—The owner of any piece of property liable for any special assessments may redeem his property from such liability by paying the entire assessment chargeable against his propert, upon the municipal clerk having published a printed notice in the official newspaper of the municipality for 10 consecutive days, or three consecutive weekly issues, which notice shall state the time for payment to begin and the time for payment to close, the last day of said notice to be not less than 30 days before the issuance of the bonds, or, after the issuance of the bonds, by paying all the instalments of the assessments which have been levied and also the amount of the unlevied instalments with interest on the latter at the rate provided in the bonds from the date of the issuance of the bonds to the time of the maturity of the last

instalment. In all cases where instalments of the assessments are not yet levied and paid as above provided, whether before or after the issuance of the bonds, the same shall be paid to the clerk, who shall receipt therefor, and all sums so paid shall be applied solely to the payment of the cost and expense of such improvements or the redemption of the bonds issued therefor.

When any piece of property has been redeemed from liability for the costs of any improvements herein provided, such property shall not thereafter be liable for further special assessments for the cost of such improvements except as hereinafter provided.

SECTION 49–2725 (I.C.S. § 4023). *Bondholders' rights and remedies.*—Said bonds, when issued to the contractor constructing the improvements in payment thereof, or when sold as above provided, shall transfer to the contractor, or other owner or holder, all the right and interest of such municipality in and with respect to every such assessment, and the lien thereby created against the property of such owners assessed as shall have not availed themselves of the provisions of this article in regard to the redemption of their property as aforesaid, shall authorize said contractor and his assigns, and the owners and holders of said bonds to receive, sue for, and collect, or have collected such assessment embraced in any such bond or through any of the methods provided by law for the collection of assessments for local improvements.

And if the municipality shall fail, neglect or refuse to pay said bonds, or to promptly collect any of such assessments when due, the owner of any such bonds may proceed in his own name to

collect such assessments and foreclose any lien thereon in any court of competent jurisdiction, and shall recover, in addition to the amount of such bonds and interest thereon, 5 per cent, together with costs of such suit including a reasonable sum for attorney's fees.

Any number of the holders of such bonds for any single improvement may join as plaintiff, and any number of holders of the property on which the same are a lien may be joined as defendants in such suit.

And such bonds shall be equal liens upon the property for the assessments represented by such bonds without priority of one over another to the extent of the several assessments against the several lots and parcels of land.

SECTION 49-2726 (I.C.S. § 4024). *Reassessment of benefits.*—In all cases of special assessments for local improvements of any kind against any property, persons or corporations whatsoever, wherein said assessments have failed to be valid in whole or in part for want of form or sufficiency, informality, irregularity or nonconformance with the charter provisions or laws governing such assessments, the city council or trustees or other authorized board or body shall be, and they are hereby, authorized to reassess such special taxes or assessments and to enforce their collection, in accordance with the provisions of law existing at the time the reassessment is made.

Whenever, for any cause, mistake or inadvertence the amount assessed shall not be sufficient to pay the cost of the improvement made and enjoyed by owners of property in the local assessment district where the same is made, it shall be lawful,

and the city council or trustees or other authorized board or body is hereby directed and authorized to make reassessments on all the property in said local assessment district sufficient to pay for such improvement, such reassessment to be made and collected in accordance with the provisions of the law or ordinance existing at the time of its levy.

SECTION 49-2727 (I.C.S. § 4025). *Application of bonding provisions.*—Nothing shall be construed as repealing or modifying any existing manner and method for cities of the first class, or those organized under special or local laws, to make improvements as hereinbefore provided for, but shall be construed as an additional and concurrent power and authority. Any city whose charter provides for the issuance of bonds for local improvements, payable only from the proceeds of special assessments, is hereby authorized to issue such bonds in the manner and with the effect provided in this chapter, and the holder of any such bond shall look only to the fund provided by such assessment for the principal or interest of such bond.

SECTIONS 49-2801 to 49-2831 (I.C.S. §§ 4121–4151) relate to sewer improvements and are to similar effect as the sections set out above.

SECTION 49–2821 (I.C.S. § 4141) provides for reassessments as to sewerage improvements, and is as follows:

> In all cases of special assessments in local sewerage improvements or sewerage disposal works of any kind against any property, person or corporation whatsoever, where any such assessments have failed to be valid in whole or in part for want of form, or of sufficient informality or irregu-

larity, or nonconformance with the charter, ordinances or provisions of law governing such assessments, the city council or trustees, or other authorized bodies or board shall be, and they are hereby authorized to reassess such special taxes or assessments and to enforce their collection in accordance with the provisions of law existing at the time the reassessment was made.

Whenever, for any cause, mistake or inadvertence, the amount assessed shall not be sufficient to pay the costs of sewerage improvement made and enjoined on the property, or on the owners of property in the local assessment district where the same is made, it shall be lawful and the city council or trustees or other authorized body or board is hereby directed and authorized to make reassessment upon all the property in said local assessment district to pay for such improvements, such reassessment to be made and collected in accordance with the provisions of law or ordinances existing at the time of the levy.

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